



FEDERAL ELECTION COMMISSION
Washington, DC 20463

DEC 26 2007

BY U.S. MAIL

Ezra Reese, Esq.
Perkins Coie
607 14th Street, N.W.
Washington, DC 20005

RE: MUR 5646
Burton Cohen

Dear Mr. Reese:

On December 17, 2007, the Federal Election Commission accepted the signed conciliation agreement submitted on your client's behalf in settlement of violations of 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d), provisions of the Federal Election Campaign Act of 1971, as amended, and the Commission's regulations, respectively. Accordingly, the file has been closed in this matter as it pertains to Mr. Cohen.

The Commission reminds you that the confidentiality provisions of 2 U.S.C. § 437g(a)(12)(A) still apply, and that this matter is still open with respect to other respondents. The Commission will notify you when the entire file has been closed.

Enclosed you will find a copy of the fully executed conciliation agreement for your files. Please note that the civil penalty is due within 30 days of the effective date of the conciliation agreement. If you have any questions, please contact me, or in my absence, co-counsel Ana Peña Wallace, at (202) 694-1650.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dawn M. Odrowski".

Dawn M. Odrowski
Attorney

Enclosure
Conciliation Agreement

28044210200

1 **BEFORE THE FEDERAL ELECTION COMMISSION**

2
3 In the Matter of)
4)
5 Burton Cohen) MUR 5646
6)
7

8 **CONCILIATION AGREEMENT**

9
10 This matter was generated based on information ascertained by the Federal Election
11 Commission ("the Commission") in the normal course of carrying out its supervisory
12 responsibilities. See 2 U.S.C. § 437g(a)(2). Following an investigation, the Commission found
13 probable cause to believe that Burton Cohen violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R.
14 § 110.3(d).

15 NOW, THEREFORE, the Commission and Burton Cohen ("Cohen" or "Respondent")
16 having duly entered into conciliation pursuant to 2 U.S.C. § 437g(a)(4)(A)(i), do hereby agree as
17 follows:

18 I. The Commission has jurisdiction over the Respondent and the subject matter of
19 this proceeding.

20 II. Respondent has had a reasonable opportunity to demonstrate that no action should
21 be taken in this matter.

22 III. Respondent enters voluntarily into this agreement with the Commission.

23 IV. The pertinent facts in this matter are as follows:

24 **Background**

25 I. Burton Cohen was a candidate, within the meaning of 2 U.S.C. § 431(2), for the
26 2004 U.S. Senate election in New Hampshire. Cohen dropped out of the U.S. Senate race on
27 June 10, 2004, before the primary election.

2. Cohen for New Hampshire ("the Committee") is a political committee within the meaning of 2 U.S.C. § 431(4) and was the principal campaign committee for Burton Cohen during the 2004 election cycle.

3. At all relevant times, Jesse Burchfield, Cohen's campaign manager, performed the duties of treasurer for the Committee.¹

Law

4. The Federal Election Campaign Act of 1971, as amended, ("the Act") prohibits a federal candidate, a candidate's agent, and entities established, financed, maintained or controlled by, or acting on behalf of, a candidate from soliciting, receiving, directing, transferring or spending funds in connection with a Federal election unless the funds are subject to the limitations, prohibitions and reporting requirements of the Act. 2 U.S.C. § 441i(e)(1)(A). Moreover, Commission regulations specifically prohibit transfers of funds or assets from a candidate's account for a non-federal election to his or her principal campaign committee for a federal election. 11 C.F.R. § 110.3(d).

5. Burton Cohen hired Jesse Burchfield in 2002 to be the campaign manager for his re-election campaign to the New Hampshire state senate. As state campaign manager, Burchfield performed the compliance functions for the state campaign, including completing disclosure reports. As a result of Cohen's successful re-election, he hired Burchfield to work as the campaign manager for the Committee.

6. During the state campaign, Cohen and Burchfield agreed to raise more funds than Cohen likely needed for his state re-election campaign so that they could use the excess funds in

¹ John Buchalski, the official treasurer named in the Committee's Statement of Organization, had no role in the Committee except to sign the first two Committee disclosure reports, and amendments thereto, that Burchfield prepared. Burchfield signed Buchalski's name to subsequent disclosure reports.

28044210202

1 a bid for higher office, most likely U.S. Senate. Thereafter, between November 2002 and
2 February 2003, Cohen and Burchfield spent \$23,860 in state campaign funds to pay for start up
3 expenses related to the U.S. Senate campaign. These expenses included payments to the
4 Committee's federal fundraising consultant Cunningham, Harris & Associates ("CHA") and to a
5 consultant who provided speechwriting assistance as well as payments for salaries and housing
6 allowances for staff who worked on the federal campaign, stamps, supplies, phone line deposits,
7 and printing expenses. None of these expenses was reported in the Committee's FEC disclosure
8 reports.

9 7. Cohen and Burchfield together spent the state funds, which benefited the
10 campaign by serving as a source to finance start-up expenses. In doing so, their general practice
11 was for Burchfield to prepare each check for Cohen's signature since Cohen had signatory
12 authority on the state campaign account. According to evidence obtained by the Commission, at
13 the time they used the state funds for the federal campaign, Burchfield knew that using state
14 campaign funds for a federal campaign was prohibited by law as a result of his own research and
15 through consultation with a principal at CHA.

16 8. Cohen contends that he was misled by Mr. Burchfield as to the legality of
17 spending state campaign funds in a federal election. However, the Commission has obtained a
18 sworn statement by Burchfield stating that Cohen was advised that state campaign funds could
19 not be used.

20 9. Burchfield pled guilty on November 14, 2005, in the United States District Court
21 of New Hampshire to a felony count of making false statements in violation of
22 18 U.S.C. § 1001 by filing FEC disclosure reports that underreported the Committee's expenses
23 and overstated its cash on hand.

28044210203

V. Burton Cohen violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d) by using state campaign funds for his U.S. Senate campaign.

VI. Respondent will take the following actions:

1. Respondent will pay a civil penalty to the Federal Election Commission in the amount of Nine Thousand Dollars (\$9,000), pursuant to 2 U.S.C. § 437g(a)(5)(A).

2. Respondent will cease and desist from violating the Act.

VII. The Commission, on request of anyone filing a complaint under 2 U.S.C. § 437g(a)(1) concerning the matters at issue herein or on its own motion, may review compliance with this agreement. If the Commission believes that this agreement or any requirement thereof has been violated, it may institute a civil action for relief in the United States District Court for the District of Columbia.

VIII. This agreement shall become effective as of the date that all parties hereto have executed same and the Commission has approved the entire agreement.

IX. Respondent shall have no more than 30 days from the date this agreement becomes effective to comply with and implement the requirement contained in this agreement and to so notify the Commission.

X. This Conciliation Agreement constitutes the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or

28044210204

1 oral, made by either party or by agents of either party, that is not contained in this written
2 agreement shall be enforceable.

3 FOR THE COMMISSION:

4 Thomasenia Duncan
5 General Counsel
6
7
8

9 BY: Ann Marie Terzaken by KMG 12-21-07
10 Ann Marie Terzaken Date
11 Associate General Counsel
12 for Enforcement

13
14 FOR THE RESPONDENT:

15
16 [Signature]
17
18
19 Ezra Reese
20 Counsel for Respondent

12/12/07
Date

28044210205